

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY JACKSON,

Defendant and Appellant.

B301125

(Los Angeles County
Super. Ct. No. TA147671)

Appeal from a judgment of the Superior Court of
Los Angeles, Sean D. Coen, Judge. Affirmed and remanded with
direction.

Aurora Elizabeth Bewicke, under appointment by the
Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief
Assistant Attorney General, Susan Sullivan Pithey, Michael C.
Keller and Charles J. Sarosy, Deputy Attorneys General, for
Plaintiff and Respondent.

Anthony Jackson appeals from the judgment entered following his conviction by a jury of carrying a concealed dirk or dagger (Pen. Code, § 21310)¹ with true findings by the court in a bifurcated proceeding that he had suffered one prior serious or violent felony conviction within the meaning of the three strikes law (§§ 667, subds. (b)-(i), 1170.12) and had served four prior separate prison terms for felonies (§ 667.5, subd. (b)). Jackson was sentenced to a five-year state prison term. On appeal Jackson contends this court should strike all four one-year prior prison term enhancements, whether imposed or stayed, pursuant to Senate Bill No. 136 (2019-2020 Reg. Sess.) (SB 136), which was signed into law after Jackson was sentenced, and remand the matter for resentencing. The Attorney General agrees, as do we.

FACTUAL AND PROCEDURAL BACKGROUND

Jackson was charged in an information filed February 27, 2019 with one count of carrying a concealed dirk or dagger. The information specially alleged that Jackson had been convicted in 2002 of first degree burglary, a serious or violent felony within the meaning of the three strikes law, and had served five prior separate prison terms for felonies as defined by section 667.5, subdivision (b). Jackson pleaded not guilty and denied the special allegations.

After hearing evidence for one day and deliberating for another day, the jury found Jackson guilty of the single felony charged. At a bifurcated court trial on Jackson's prior convictions, the court found true Jackson's prior serious or violent felony conviction for first degree burglary and also found true

¹ Statutory references are to this code unless otherwise stated.

that Jackson had been convicted in the five cases alleged as prior separate prison terms. However, defense counsel informed the court that one of Jackson’s convictions—unlawful possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a))—had been reduced to a misdemeanor; and the prosecutor confirmed it was not eligible as a prior prison term conviction. The prosecutor told the court, “I agree. . . . I’m not using it as a prison prior.” Accordingly, the court found true that Jackson had served four prior separate prison terms for felonies within the meaning of section 667.5, subdivision (b).²

Turning to sentencing, the court denied Jackson’s motion to dismiss his prior strike conviction and imposed a five-year state prison term: the middle term of two years for carrying a concealed dirk or dagger, doubled under the three strikes law, plus one year for one of Jackson’s prior prison terms. The court imposed and stayed the remaining three prior prison term

² Although the court found true only four of the five alleged prior separate prison term enhancements, the minute order from the sentencing hearing incorrectly states the court found all five of those alleged enhancements true. On appeal Jackson asks that this error be corrected. (See *People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2 [“[t]he record of the oral pronouncement of the court controls over the clerk’s minute order”]; *People v. Gabriel* (2010) 189 Cal.App.4th 1070, 1073 [oral pronouncement controls when there is a discrepancy with the minute order].) Because none of the prior prison term enhancements survives SB 136, the issue is moot. Nonetheless, on remand for resentencing, the court should ensure the clerk’s minute order accurately reflects the sentence imposed.

enhancements.³ The court found that Jackson had the ability to pay the fees, fines and assessments imposed.

DISCUSSION

Effective January 1, 2020, SB 136 amended section 667.5, subdivision (b), to provide for a one-year prior prison term sentence enhancement only for sexually violent offenses as defined in Welfare and Institutions Code section 6600, subdivision (b). (*People v. Jennings* (2019) 42 Cal.App.5th 664, 681; *People v. Lopez* (2019) 42 Cal.App.5th 337, 340-341.) SB 136 applies to Jackson because his sentence is not yet final. (See *Jennings*, at p. 682 [“Senate Bill No. 136’s (2019-2020 Reg. Sess.) amendment to section 667.5, subdivision (b) applies retroactively to all cases not yet final as of its January 1, 2020, effective date”]; *Lopez*, at pp. 341-342 [applying SB 136 retroactively]; see *In re Estrada* (1965) 63 Cal.2d 740, 744-745 [absent contrary legislative intent, “[i]f the amendatory statute lessening punishment becomes effective prior to the date the judgment of conviction becomes final then, in our opinion, it, and

³ At the time Jackson was sentenced, the court was not authorized to stay a prior prison term enhancement alleged and found true pursuant to section 667.5, subdivision (b). The enhancement had to be imposed or struck: “Once the prior prison term is found true within the meaning of section 667.5(b), the trial court may not stay the one-year enhancement, which is mandatory unless stricken.” (*People v. Langston* (2004) 33 Cal.4th 1237, 1241; accord, *People v. Lua* (2017) 10 Cal.App.5th 1004, 1020 [concluding the trial court imposed an unauthorized sentence by imposing and staying the one-year sentence enhancement under section 667.5, subdivision (b)].)

not the old statute in effect when the prohibited act was committed, applies”].)

None of Jackson’s prior convictions was for a sexually violent offense.⁴ Accordingly, no section 667.5, subdivision (b), one-year prior prison term enhancements may be included in his sentence. We remand to the trial court to resentence Jackson without those enhancements. (Cf. *People v. Buycks* (2018) 5 Cal.5th 857, 896.)

DISPOSITION

Jackson’s conviction is affirmed. The sentence is vacated, and the cause remanded with instructions to the trial court to strike the one-year prior prison term enhancements and to resentence Jackson. The trial court is to ensure a corrected abstract of judgment is prepared and forwarded to the California Department of Corrections and Rehabilitation.

PERLUSS, P. J.

We concur:

SEGAL, J.

FEUER, J.

⁴ The four felony convictions for which Jackson served prior separate prison terms were for burglary, grand theft with a prior theft conviction and two convictions for taking a vehicle without the owner’s consent.